IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10616 OF 2004

B.S. Rath,)
age 59 years,)
4B, Ganesh Bhavan,)
Senapati Bapat Marg,)
Mahim, Mumbai - 400 016.)...Petitioner

V/s.

1. Union of India,)
Through the General Manager of)
Western Railway and Others)
)
2. Divisional Railway Manager,)
Mumbai Central Division,)
)
3. Shri Pankaj Malaviya,)
Additional Divisional Rly.Manager(O),)
)
4. Smt.Chetna Kumar,)
Additional Divisional Rly.Manager(T),)
)
5. CH.Electrical Distribution Engr,)
Western Railway, Churchgate.)...Respondents

Petitioner in person present.

Shri Suresh Kumar for Respondents.

CORAM : DR.S. RADHAKRISHNAN &
V.M. KANADE, JJ.

DATED : AUGUST 22, 2006

ORAL JUDGMENT (PER V.M. KANADE, J.) :-

1. The petitioner has filed this petition under Article 226 and 227 of the Constitution of India and the following prayers are made which are reproduced as under

:-

(a) "That the Hon’ble High Court be pleased to issue a writ of certiorari or a writ of mandamus or order or direction in the nature of certiorari calling for records and proceedings in the OA 95/99 and RP 18/03 and quashing and setting aside the impugned order dt. 31.1.2003 and compulsory retirement order dt.28.5.2003 and praying for reinstatement on the post as Sr.Motorman with full back wages, as if periods spent on duty,

(b) That the Hon’ble High Court be pleased to club this petition with Writ Petition 4608/02 pending in this Hon’ble High Court,

(c) That the Hon’ble High Court be pleased to expedite the petition,

(d) For any other relief Hon’ble Court may deemed fit to grant,

(e) The cost of this petition may please be granted,

(f) Rules to be issued and records and proceedings be called for."

2. Brief facts which are relevant for the purpose of adjudicating the dispute in the present case are as under :-

3. The petitioner joined Western Railway as an Apprentice on 15th February, 1965. He completed his Apprenticeship training on 24th February, 1969 and was appointed as motorman on 15th March, 1969. It is the case of the petitioner that his grandfather owned a piece and parcel of land admeasuring 2027 square yards at Cadel Road, Mahim. Petitioner’s grandfather expired in 1945 and the property was divided between two sons of his grandfather and his father became owner of about 735 square yards of property in 1947. According to the

petitioner, his father got the plan sanctioned for construction of 13 flats on that plot of land and started development of the property in 1962. However, the development could not be completed as the petitioner's father expired on 22nd April 1968. On the death of the petitioner's father, his brother became the karta of the Hindu Undivided Family property. However, since his brother migrated to the United Kingdom in 1962, the petitioner was given Power of Attorney to act on his behalf as karta of Hindu Undivided Family property. It is the case of the petitioner that even before the petitioner became motorman on 15th March, 1959, the Undivided Hindu Family Property devolved on the petitioner and his brother. In 1986, an inquiry was initiated against the petitioner on the ground that the petitioner had failed to inform and abide by Rule 18(1) under Railway Service (Conduct) Rules, 1966. This enquiry, however, was closed by Memorandum dated 11th May, 1987. It is the case of the petitioner that railway authorities were fully aware with the fact that he inherited the landed property and after development of the property, the flats were sold by him and that the

property was completely developed in the year 1980 and thereafter, the proceedings which were initiated for non-compliance of Rule 18(1) were dropped. Thereafter again, a second chargesheet was issued on 18th December, 1992. It was alleged that the petitioner had not complied with Rule 18(1) and 18(2) by not informing and obtaining prior permission for developing the property and thereafter, selling the flats which were constructed by him. Chargesheet was issued in December, 1992. The inquiry was commenced on 24th June, 1994 and it concluded on 20th September, 1995. The inquiry officer submitted his findings on 7th October, 1996 and found the petitioner guilty of violation of Conduct Rules as alleged in the chargesheet. On the basis of his opinion and on the basis of evidence produced before the Enquiry Officer, an order of removal was passed by respondent no.4 on 16th April, 1997. Against this order, the petitioner preferred an appeal before the Appellate Authority. His appeal also was dismissed by the Appellate Authority.

4. The petitioner thereafter preferred an

application to the Central Administrative Tribunal which was partly allowed and CAT passed an Order dated 31st January, 2003 directing the Appellate Authority to review its own order as it felt that the penalty of removal was disproportionate. The charge levelled against the petitioner for violation of Rule 18(1) was set aside. However, the findings of the Enquiry Officer and the Appellate Authority in respect of charge of violation of Rule 18(2) was confirmed by the CAT.

5. The petitioner preferred a review application to the Central Administrative Tribunal being Review Petition No.18/2003 seeking review of the earlier order. In the meantime, the Appellate Authority set aside the order of removal and directed that the petitioner should be compulsorily retired.

6. After this order was passed, the Review Petition came up for hearing before the CAT which refused to entertain the review petition and the review petition was dismissed and its earlier order was confirmed.

7. The order of the Appellate Authority retiring the petitioner compulsorily from service was implemented and the petitioner also retired on attaining the age of superannuation in the meantime. The petitioner, therefore, has challenged the order passed by the CAT in the original Application as well as the Review Petition and is also challenging the order passed by the Appellate Authority on review petition compulsorily retiring him from service and is also seeking writ or order from this Court directing the respondent to reinstate him with full back wages.

8. As the petitioner has already retired on attaining the age of superannuation during the pendency of the proceedings, the question of reinstatement, therefore, does not arise and therefore, the issue which falls for consideration before this Court is whether the order passed by the CAT can be interfered with by this Court by excising its writ jurisdiction under Article 226.

9. The petitioner who is appearing in person

submitted that his grandfather had acquired the property and during course of time, it devolved upon him as a HUF property. He submitted that there was no legal requirement that prior intimation before sale of HUF property should be given to the respondent. He submitted that upto 1985, there was no rule which required the railway employee to inform about the sale of HUF property. He further submitted that Railway Authorities were very well aware about the property being acquired by the petitioner as HUF property in 1969 itself and therefore, it was not necessary to give further intimation about the sale of the flats to the respondents. He submitted that Rule 18(2) was not applicable to the facts of the present case as the said Rule did not deal with HUF property. He also submitted that the petitioner was not estopped form challenging the order of appellate authority and the order passed by CAT since he had accepted the dues after reserving his right to agitate them before competent court. He further relied on the judgment of the Calcutta High Court delivered by Division Bench in the case of **Broja Ballav Ghose V/s. Union of India.**

10. Shri Sureshkumar, learned Counsel for Union of India submitted that the petitioner was estopped from agitating and challenging the order passed by CAT since thereafter he was compulsorily retired by order of the appellate authority which was implemented by the respondent and the petitioner had accepted the dues. he relied on the Judgment of the Supreme Court in the case of **State of Punjab and Others V/s. Krishan Niwas reported in (1997) 9 SCC Page 31.** He submitted that in the present case, concurrent finding was given by the Enquiry Officer and the appellate authority and this was confirmed by the CAT and there was no reason to interfere with the said order.

11. We have heard the petitioner who is appearing in person and the learned Counsel for the respondent.

12. In the present case, the short issue which needs to be decided is whether under the provisions of Rule 18(2), a duty is cast on the railway employee to give intimation about the disposal of his property to the

authorities and prior approval is to be obtained before the disposal of the property.

13. Before deciding the issue, it would be relevant to note the relevant Rule 18(2) which reads as under :-

> **"No railway servant shall, except with the previous knowledge of the Government, acquired or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family.**
>
> **. Provided that the previous sanction of the Government, shall be obtained by the railway servant if any such transaction is -**
>
> **(i) with a person having official dealings with the railway servant; or**
>
> **(ii) otherwise than through a regular or reputed dealer."**

14. Perusal of the above Rule clearly indicates that every railway servant is under a legal obligation to give prior information to the Railway Authorities about the purchase or sale of any property. The Rule clearly indicates that this requirement is applicable in the case of property standing in the name of the employee or

any member of his family. The contention of the petitioner that in case of property standing in the name of HUF, it is not necessary to inform the Railway Authorities, therefore, cannot be accepted. Perusal of Rule 18(1) and 18(2) also indicates that railway employee has to disclose the information about his property at the time of joining service which is indicated in Rule 18(1). The petitioner has been exonerated of the charge which is levelled against him under Rule 18(1) by the CAT. So far as Rule 18(2) is concerned, it is in respect of property while the employee is in service. The underlying purpose of the rule is clearly to keep the Railway Authorities informed about any transaction of purchase and sale of property while the employee is in service so as to keep a track of assets acquired or sold by the employee and further to ensure transparency in such transactions. Admittedly, the petitioner did not give prior information abut the sale of flats by him in respect of his HUF property which he developed and later on sold. The contention of the petitioner that the respondent already had prior knowledge about the said development

and sale of the property is not borne out of the record and the petitioner could not point out a single document to substantiate his claim. The petitioner invited our attention to the charge which was framed against him and submitted that the charge itself indicated that the respondent was aware about the said transaction. This submission of the petitioner cannot be accepted as the requirement of Rule 18(2) is that before the said transaction takes place, prior information has to be given to the railway authorities which admittedly has not been done. There is no infirmity, therefore, in the finding recorded by the Enquiry Officer which is confirmed by the appellate authority as well as by the CAT. There is neither any error of jurisdiction nor any legal error committed by the CAT and as such, we do not see any reason to interfere with the finding recorded by the Tribunal. In the result, there is no merit in the submission made by the learned Counsel for the petitioner.

15. Writ Petition, therefore, is dismissed. Rule is discharged. Under the circumstances, there shall be no

order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(V.M. KANADE, J.)